Filed 9/29/09 Crawford v. Pacific Refinign Co. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

ROBERT K. CRAWFORD et al., Cross-complainants and Appellants, v. PACIFIC REFINING COMPANY et al., Cross-defendants and Respondents.	C056626 (Super. Ct. No. 61943)

This is an action by two attorneys seeking damages for interference with their ability to recover attorney fees from their former clients. They allege causes of action for interference with contract and interference with prospective economic advantage. The trial court granted summary judgment against the attorneys.

On appeal, the attorneys assert the trial court erred in granting summary judgment. We affirm because (1) there was no enforceable attorney fee contract to support a cause of action for interference with contract and (2) there was no act

committed to the detriment of the attorneys that was wrongful by some measure other than the fact of interference with prospective economic advantage. We also conclude that (3) there remain no disputed issues of material fact.

FACTS

A. *Underlying Action*

William Heard sustained injuries as a result of exposure to a toxic substance. In April 1995, he and Linda Heard sued several companies for damages. They were represented by James Mart pursuant to a contingency fee agreement providing for a fee of between 33 1/3 percent and 40 percent of the recovery. The agreement also provided for an attorney's charging lien, as follows: "In the event of recovery, [Mart and his firm] will have a lien for their fees and advanced costs which will be paid out of any recovery."

In April 1996, Robert Crawford substituted into the case as counsel for the Heards. The Heards did not sign a new contingency fee agreement with Crawford. Instead, they orally agreed with Crawford to be bound by the agreement that they signed with Mart.

In December 1996, the Heards consented to the addition of attorney Gerald Woods to the litigation team. They agreed that Woods would receive a share of the contingency fee. And in March 1997, Mary Linde also associated in as cocounsel. The three attorneys orally agreed with the Heards that each of the attorneys would receive one-third of the contingency fee.

In June 1997, the Heards settled with one of the defendants, Odyssey Trucking, for $650,000. Attorneys Crawford, Woods, and Linde orally agreed to reduce the contingency fee as to this defendant's settlement to 20 percent so the Heards could buy a home. In exchange, the Heards agreed to pay 40 percent of the gross recovery when they settled with the remaining defendants.[1]

In February 1998, the Heards, acting through Linde, filed a notice in the trial court stating that Crawford was no longer authorized to act as counsel for the Heards. Crawford had not agreed to withdraw from the case.

In April 1998, the Heards, represented by Linde, settled with the remaining defendants, Pacific Refining Company and Hickson Kerley, Inc., for an additional $400,000. As part of the settlement, the Heards agreed to indemnify the defendants for any liability to Crawford for his fees. Attorneys Crawford and Woods did not know about or participate in the settlement.

In May 1998, Crawford filed a notice of lien for attorney fees and costs, claiming that he and Woods were entitled to attorney fees from the settlement.

---

[1] The facts concerning the reduction in the contingency fee as to the settlement with Odyssey Trucking are alleged in the cross-complaint. However, the evidence cited by Crawford to support this factual statement in the cross-complaint states only that Crawford agreed to the settlement so that the Heards could buy the home. It does not state that the contingency fee was reduced from 40 percent to 20 percent.

The $400,000 from the settlement with Pacific Refining Company and Hickson Kerley, Inc. was disbursed to the Heards ($325,000) and Linde ($75,000 in attorney fees).

B. *Current Action*

In February 2000, Crawford and Woods filed a cross-complaint.[2] The record does not reveal the nature of the original complaint in the action. However, the parties agree that only the sixth cause of action of the cross-complaint is relevant to this appeal.

The first five causes of action of the cross-complaint were for the recovery of attorneys fees from the underlying action. These causes of action were alleged against the Heards and Linde.

As amended, the sixth cause of action named as cross-defendants (1) Pacific Refining Company, and its attorney Fred Blum, and (2) Gerling America Insurance Company, and its attorneys Richard Finn and Peter Langley.

The sixth cause of action alleged two torts: (1) interference with contract and (2) interference with prospective economic advantage. It alleged that the cross-defendants "interfered with the contractual relationship existing between Cross-Complainants Crawford and Woods and the Heards and the rights of Cross-Complainants to receive contingent fees in the

---

[2] While this action was pending, Robert Crawford passed away and his widow, Patricia Crawford, was substituted in as a party in his place.

$400,000.00 settlement moneys . . . , and interfered with Cross-Complainants Crawford's and Woods' prospective economic advantage to receive contingent fees in those sums by dispersing [*sic*] and paying those moneys with notice and knowledge of Crawford's written attorney fee lien therein without regard thereto and in an apparent rejection thereof, thereby depriving Cross-Complainants Crawford and Woods of their interests therein . . . ."

The Heards filed a bankruptcy petition, which resulted in a stay of this action. After completion of the bankruptcy proceedings and discharge of the Heards' debts, the cross-defendants filed a motion for summary judgment.

The trial court granted the motion for summary judgment. It concluded that there was no basis for Crawford's lien for attorney fees and no liability on the part of the cross-defendants for interference with contract because Crawford and Woods did not have a written contingency fee agreement with the Heards. The court also concluded that there was no liability for interference with prospective economic advantage because Crawford and Woods had failed to establish that the cross-defendants had committed some wrongful act apart from the alleged interference.

Crawford and Woods appeal.[3]

---

[3] On July 17, 2007, the trial court entered judgment in favor of Richard Finn, from which Crawford appealed on August 16, 2007. On May 21, 2009, the trial court entered an amended judgment in favor of Pacific Refining Company and Fred Blum.

Unless more specificity is required, we refer to the cross-complainants, collectively, as Crawford, and to the cross-defendants, collectively, as Pacific Refining.

STANDARD OF REVIEW

"Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A 'party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.' [Citation.] Once the moving party meets this initial burden, the burden then shifts to the party opposing summary judgment to establish, by means of competent and admissible evidence, that a triable issue of material fact still remains. [Citation.] [¶] . . . [¶]

"On appeal, the reviewing court makes '"an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. [Citations.]"' [Citations.] A trial court's ruling granting summary judgment may be affirmed on appeal if it

---

Although the amended judgment was filed after the notice of appeal, we deem the appeal to be from both the judgment and the amended judgment. (See Cal. Rules of Court, rule 8.104(e).)

The record on appeal does not reflect any trial court resolution with respect to cross-defendants Gerling America Insurance Company and Peter Langley. In any event, they are not parties to this appeal.

is proper upon any theory of law applicable to the case. [Citation.]" (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 525-526.)

DISCUSSION

I

Interference with Contract

Crawford's cause of action for interference with contract fails because he did not have an enforceable contract with the Heards.

The elements of a cause of action for intentional interference with contract are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126, fn. 2.) The contract on which the cause of action is based must be valid and enforceable. (*Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 879.)

The requirements for a contingent fee agreement are established by law. The agreement must (1) be in writing; (2) set forth the agreed upon contingent rate; (3) state how disbursements and costs incurred in the litigation will affect the fee and the client's recovery; and (4) specify how matters not encompassed by the contingent fee (such as collecting on a judgment) will be paid for by the client. (Bus. & Prof. Code, §

6147, subd. (a).) Any modification of a contingent fee agreement must be in writing and signed by the parties. (*Fergus v. Songer* (2007) 150 Cal.App.4th 552, 570.) Failure to comply with any of these requirements renders the fee agreement voidable at the client's option, whereupon the attorney shall "be entitled to collect a reasonable fee." (Bus. & Prof. Code, § 6147, subd. (b).) Fee agreements are strictly construed against the attorney. *(Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033, 1037.)

Because there was no written contingency fee agreement between Crawford and the Heards, the Heards "had an absolute right to void the contract before or after services were performed." *(Alderman v. Hamilton, supra,* 205 Cal.App.3d at p. 1038; Bus. & Prof. Code, § 6147, subd. (b).) A client exercises this right by denying the existence of an enforceable contingent fee contract and refusing to pay any money to the attorney. *(Alderman v. Hamilton, supra,* at p. 1038.) That is what happened when the Heards refused to pay Crawford a fee from the proceeds of the settlement with the remaining defendants, even though the Heards agreed to pay Crawford from the earlier settlement with Odyssey Trucking and services had already been performed.

Therefore, although there was evidence (Crawford's deposition testimony) that the Heards orally agreed to be bound by the contingency fee agreement that they entered into with Mart, the oral argument with Crawford was voidable even after services were performed, and it was voided when the Heards

refused to pay Crawford. The alleged contingency fee agreement therefore fails to support a cause of action for interference with contract.

Likewise, the asserted attorney fee charging lien fails to support a cause of action for interference with contract. "In California, an attorney's lien is created only by contract -- either by an express provision in the attorney fee contract [citations] or by implication where the retainer agreement provides that the attorney is to look to the judgment for payment for legal services rendered [citations]. Unlike a service lien or a mechanic's lien, for example [citation], an attorney's lien is not created by the mere fact that an attorney has performed services in a case. [Citations.]" (*Carroll v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1172.) "After the client obtains a judgment, the attorney must bring a separate, independent action against the client to establish the existence of the lien, to determine the amount of the lien, and to enforce it. [Citations.]" (*Id.* at p. 1173.) "Because an attorney's lien is not automatic and requires a contract for its creation, a direct contractual relationship between the attorney and the client is essential." (*Id.* at p. 1172.) "It bears emphasizing that a notice of lien is not the same as the lien (the security interest) or the lien claim." (*Id.* at p. 1173.)

Here, there is no attorney fee charging lien because Crawford and the Heards did not enter into an enforceable contract to create such a lien. Crawford cannot look to the Heards' contingency fee agreement with Mart to establish the

charging lien because that agreement was voided when the Heards refused to comply with its provisions.

Because there was no enforceable contract between Crawford and the Heards, the trial court properly granted the motion for summary judgment as to the interference with contract cause of action. Given this conclusion, we need not discuss the other elements of an interference with contract cause of action.

II

Interference with Prospective Economic Advantage

Crawford's cause of action for interference with prospective economic advantage fails because Pacific Refining did not commit an act that was wrongful by some legal measure other than the fact of interference itself.

The elements of a cause of action for interference with prospective economic advantage "are usually stated as follows: '"'(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." [Citations.]' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) "[A] plaintiff seeking to recover damages for interference with prospective economic advantage must plead and prove as part of its case-in-chief that the defendant's conduct was 'wrongful by some legal measure other

than the fact of interference itself.' [Citation.]" (*Ibid.*) "[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Id.* at p. 1159, fn. omitted; see also *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 339-343 [finding no liability for interference with prospective economic advantage because no independently wrongful act in interfering with attorney fee].)

Crawford asserts that Pacific Refining committed two acts that were wrongful independent of the alleged interference with Crawford's prospective economic advantage. Those are that (1) Pacific Refining paid the settlement to the Heards despite Crawford's attorney fee charging lien and (2) there was proof of a contingent fee agreement between the Heards and Crawford as manifested by the Heards' partial performance under that contract. Neither assertion has merit. We have already explained that (1) there was no valid attorney fee charging lien in favor of Crawford and (2) the oral contingency fee agreement, if any existed, was properly voided by the Heards.

Because Crawford established no act on the part of Pacific Refining that was wrongful by some legal measure other than the fact of interference itself, the trial court properly granted the motion for summary judgment as to the interference with prospective economic advantage cause of action. Given this conclusion, we need not discuss the other elements of an interference with prospective economic advantage cause of action.

III

Material Facts

Crawford contends that disputed issues of material fact remain untried. This contention has no merit because the facts that he claims are material do not change the result.

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Materiality is dependent on the elements of the cause of action, and "'a complete failure of proof concerning an essential element of a nonmoving party's case necessarily renders all other facts immaterial. . . .'" (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 585, fn. 7, quoting *Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 323 [91 L.Ed.2d 265, 273].)

Therefore, any disputed fact that is not material to the element in each cause of action that we have concluded is absent -- the enforceable contract element of the interference with contract cause of action or the independently wrongful act element of the interference with prospective economic cause of action -- is insufficient to prevent affirmance of the judgment.

Crawford lists five issues of fact that he asserts are material and disputed. They are: "(1) whether there was a valid contract, oral or written, or quasi in nature, or an economic relationship with the probability of future economic benefit between the Heards and [Crawford]; (2) whether [Pacific

Refining] had knowledge of the contract or economic relationship; (3) whether [Pacific Refining] knew or had notice of the claim of lien at the time [it] paid the settlement funds in derogation of the claim of lien; (4) whether disruption of the contractual or economic relationship occurred; and (5) whether there were resulting damages to [Crawford's] contractual relationship or economic expectancy."

The assertion that these are material issues is, in each instance, (1) without merit as a matter of law as discussed above (for example, the absence of an enforceable contract) or (2) immaterial because the causes of action fail on other grounds (for example, the immateriality of damages when other elements are absent). Accordingly, there are no remaining disputed material facts to be tried.

DISPOSITION

The judgment is affirmed. Cross-defendants are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

HULL, J.